

### REMARKS

The March 21, 2007 Official Action has been carefully reviewed. In view of the amendments submitted herewith and the following remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset it is noted that a shortened statutory response period of three (3) months was set forth in the March 21, 2007 Official Action. Therefore, the initial due date for response was June 21, 2007. Accordingly, a petition for a 3 month extension of time is presented with this response, which is being filed within the three month extension period.

Claims 5, 10, and 11 have been rejected for allegedly failing to satisfy the written description requirement of 35 U.S.C. §112, first paragraph.

Claims 5 and 9-11 have also been rejected for allegedly failing to satisfy the enablement requirement of 35 U.S.C. §112, first paragraph.

The Examiner has also rejected claim 5 under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent 5,877,402 as evidenced by Legen et al. (Plant J. (2002) 31:171-188).

Lastly, the Examiner has objected to claims 6-9 for being dependent on a rejected base claim.

The foregoing objection and rejections constitute all of the grounds set forth in the March 21, 2007 Official Action for refusing the present application.

In accordance with the instant amendment, claim 5 has been amended. Support for the amendment to claim 5 can be found, for example, in claims 10 and 11 as previously presented, Examples I and IV, and Figure 5. No new matter has been introduced into this application by reason of any of the amendments presented herewith.

In view of the present amendment and the reasons set forth in this response, Applicants respectfully submit that the objection to claims 6-9; the 35 U.S.C. §112, first paragraph rejections of claims 5 and 9-11; and the 35 U.S.C.

§102(e) rejection of claim 5, as set forth in the March 21, 2007 Official Action, cannot be maintained. These grounds of objection and rejection are, therefore, respectfully traversed.

**CLAIMS 5 AND 9-11, AS AMENDED, SATISFY THE WRITTEN DESCRIPTION AND ENABLEMENT REQUIREMENTS OF 35 U.S.C. §112, FIRST PARAGRAPH**

Claims 5, 10, and 11 have been rejected for allegedly failing to satisfy the written description requirement of 35 U.S.C. §112, first paragraph. Additionally, claims 5 and 9-11 have been rejected for allegedly failing to satisfy the enablement requirement of 35 U.S.C. §112, first paragraph. It is the Examiner's position that the specification 1) fails to provide adequate written description for the NEP and PEP promoters in claims 10 and 11, respectively, from any species of plant, 2) fails to adequately describe the structural and functional characteristics of the full breadth of PEP and NEP promoters recited in claims 5, 10, and 11, and 3) fails to fully enable a skilled artisan to practice the instantly claimed invention over the entire breadth of PEP and NEP promoters claimed.

Applicants respectfully disagree with the Examiner's position for all of the reasons of record. However, in the sole interest of expediting prosecution of the instant application, Applicants have amended claim 5, from which claims 9-11 depend, to recite that the *clpP*, *rpoB*, and *atpP* NEP promoters are from the plant species identified in Example 1 and Figure 5. Notably, the Examiner states at pages 3 and 5 of the instant Official Action that these NEP promoters are adequately described in the specification and fully enabled.

With regard to the PEP promoters, the Examiner states that only the rice *clpP* PEP promoter is fully enabled. Applicants respectfully disagree and submit that Example IV, particularly page 36 and the reference cited therein, fully enables the PEP promoters recited in amended claim 5.

In light of all of the foregoing, Applicants

respectfully submit that the rejections of claim 5 and 9-11 under 35 U.S.C. §112, first paragraph are untenable and respectfully request their withdrawal.

**CLAIM 5, AS AMENDED, IS NOT ANTICIPATED BY THE '402 PATENT**

The Examiner has rejected claim 5 under 35 U.S.C. §102(e) as allegedly anticipated by the '402 patent as evidenced by Legen et al. Specifically, is the Examiner's position that the '402 patent discloses a construct comprising the rps16 promoter operably linked to the uidA coding region and that Legen et al. teach that the rps16 promoter comprises both a PEP and NEP promoter.

Applicants continue to disagree with the Examiner for the reasons of record. However, as stated hereinabove, Applicants have amended claim 5 to recite the features previously cited in claims 10 and 11, which the Examiner has determined to be novel and nonobvious over the prior art.

Inasmuch as the '402 patent and Legen et al. fail to teach each and every element of the instantly claimed invention, Applicants respectfully submit that the instant rejection of claim 5 is untenable and should be withdrawn.

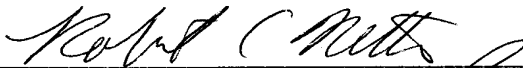
**CONCLUSION**

In view of the amendments presented herewith, and the foregoing remarks, it is respectfully urged that the objection and rejections set forth in the March 21, 2007 Official Action be withdrawn and that this application be passed to issue.

In the event the Examiner is not persuaded as to the allowability of any claim, and it appears that any outstanding issues may be resolved through a telephone interview, the

Examiner is requested to call the undersigned at the phone number given below.

Respectfully submitted,  
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